(54)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**Single Bench : Hon'ble Shri H.L. Dattu, C.J.**

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**Writ Petition No. 4434 of 1994**

**PETITIONERS**

1. Mohammad Yunus S/o Sheikh Mohammad, Employeed in State Bank, House No. 177/89, Chhotapara, Raipur (MP)
2. Mohammad Shabber S/o Sheikh Mohammad, Employeed in State Bank, R/o House No. 867, Pension Bada, Raipur (M.P.)
3. Sheikh Farooq, S/o Sheikh Mohammad, Employeed in Public Department, R/o House No. 867, Pension Bada, Raipur (M.P.)
4. Khairunnisa D/o Sheikh Mohammad R/o Telibhanda, Raipur (M.P.)

versus

**RESPONDENTS**

1. Sarju Prasad Yadav S/o Shri Mangaluram Yadav, Retd. Railway Employee, aged about 60 years, R/o Pension Bada, Raipur (MP)
2. Authorised Officer appointed Under Section 39 of the M.P. Accommodation Control Act (Rent Controlling Authority ) Raipur (MP)

Writ petition under Article 226/227 of the Constitution of India.

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Present : None appears for the petitioners.
Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, counsel for respondent No.1.

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**ORAL ORDER**

**(Passed on 07th May, 2007)**

The petitioners being aggrieved by the order passed by the Authorized Officer under the provisions of Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act') in case No. 34/90 (7)92-93 dated 02-12-1994, are before this Court in this writ petition under Articles 226 and 227 of the Constitution of India.

(2) By the impugned order the Authorized Officer in exercise of his powers under Section 42 of the Act has directed the petitioners to quit and deliver the

vacant possession of the house bearing No.2/866 and 2/867 situate at Pension Bada, Raipur.

(3) Brief facts of the case are that the petitioners are the tenants of respondent No.1 of residential premises bearing No. 2/866 and 2/867 situate at Pension Bada, Raipur. For the reasons best known to him, may be, at the ill advice of his lawyer, the respondent No.1 had gone before the Authorized Officer by filing an application under Section 42 of the Act. The Authorized Officer had passed an order in favour of respondent No.1 directing the tenants namely the petitioners to quit and deliver the vacant possession of the premises in question. Aggrieved by the said order, the tenants are before me in this writ petition.

(4) Shri H.B. Agrawal, learned Sr. counsel appearing for respondent No. 1 would contend that if for any reason the tenants/petitioners were aggrieved by the orders passed by the Authorized Officer under Section 42 of the Act, they should have filed an appeal before the Appellate Authority as provided under the Act, and therefore, the petition filed by the petitioner is not maintainable before this Court.

(5) If for any reason, the order is passed by an Authority which has no jurisdiction or which does not have any authority of law, then the orders so passed by him can be questioned before this Court in a petition under Article 226 of the Constitution of India. Therefore, in my opinion the submission of learned Sr. counsel has no merit whatsoever.

(6) Then I come back to be factual matrix of the case. Admittedly, the respondent No. 1 is the landlord. Petitioners are his tenants in respect of residential premises bearing No.2/866 and 2/867 situate at Pension Bada, Raipur. The landlord had moved an application under Section 42 of the Act to evict the tenants from the aforesaid premises. The Authorized Officer has invoked his power under Section 42 of the Act and granted the relief to respondent No.1. The order so passed in my opinion is wholly illegal and irregular. Section 42 of the Act merely provides for termination of the tenancy

of a person who has been allotted an accommodation by virtue of the office he holds and that tenancy will come to an end if he ceases to hold such office on account of his transfer, retirement or otherwise and such person shall vacate the accommodation within seven days from the date of happening of the aforesaid event/events.

Proviso appended to said Section states that the Collector or the Authorized Officer may, for the reasons to be recorded in writing, extend the period for vacating the accommodation by a further period not exceeding four months if they are satisfied with the request made by the allottee. The petitioners were not the allottees of the house bearing No.2/866 and 2/867 situate at Pension Bada, Raipur. They are in fact the tenants of the respondent. The Authorized Officer by no stretch of imagination could have invoked the provisions of Section 42 of the Act to evict the petitioners from the residential accommodation which they are occupying.

(6) In that view of the matter, I am of the opinion that the impugned order passed by the 2nd respondent cannot be sustained by this Court and accordingly the petition requires to be allowed and it is allowed. The impugned order passed by the 2nd respondent is quashed. Ordered accordingly.

**Sd/-**
**Chief Justice**